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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

L. CHESTER CARTER,

Appellant,

v.

THE COMMONWEALTH OF VIRGINIA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF VIRGINIA

APPELLEE'S MOTION TO DISMISS

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The Commonwealth of Virginia, appellee in this cause, respectfully moves this Court for an Order dismissing the appeal on the grounds that the judgment does not present a substantial federal question and rests on an adequate non-federal basis.

STATEMENT OF FACTS

On October 28, 1984, the Commonwealth of Virginia filed a petition for Writ of Quo Warranto pursuant to § 8.01-636(2)(a) of the Code of Virginia.[1] The petition alleged that appellant, a lay person, had engaged in the unlawful practice of law in Virginia in the representation of one Horrace A. Jarratt in a legal proceeding. The petition sought an injunction.

On November 5, 1984, Appellant was served with the petition and commanded to appear on the 13th day of November, 1984, at 1:00 p.m., before the Circuit Court of Sussex County to show by what warrant or authority of law he was engaging in the practice of law in Virginia.

On November 13, 1984, a bench trial was held on the writ. Before any evidence was taken, appellant made motions to dismiss the proceeding for lack of jurisdiction and for lack

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[1]Va. Code § 8.01-636(2)(a) provides:

"A writ of quo warranto may be issued and prosecuted in the name of the Commonwealth in any of the following cases:

* * *

2a. Against a person engaged in the practice of any profession without being duly authorized or licensed to do so."

of merit on the ground that he had an unqualified constitutional right to practice law without a license. Appellant also argued that he had no engaged in the practice of law since he had represented Mr. Jarratt without compensation. Both motions were denied. Appellant then requested "counsel of [his] choice who may or may not be a member of the bar." The motion was denied. The parties informed the Court that they were ready to proceed.

Evidence was taken. In its case in chief, the Commonwealth tendered numerous legal documents purportedly prepared by Horrace A. Jarratt. Mr. Jarratt testified that he had an eighth grade education. Mr. Jarratt could not explain the meaning or purpose of those pleadings. For example, Mr. Jarratt could not describe the steps he had taken to appeal his case. Mr. Jarratt testified that he obtained a legal citation from looking at television and did not know what the citation meant. Mr. Jarratt did not know the meaning of the phrase "sua sponte" even though it was used in the pleadings. Mr. Jarratt testified that the pleadings were typed by a friend; yet he did not know the friend's last name or address. Mr. Jarratt could not identify his legal

counsel whom he had stated in the pleadings was present and ready to proceed in his behalf. He acknowledged that the appellant was present at all hearings, and had assisted him in preparing the documents.

Testimony from opposing counsel in the legal proceeding against Jarratt and the Clerk of the Circuit Court of Colonial Heights established that appellant had been intimately involved in the preparation and filing of pleadings in Jarratt's case.

Appellant testified that he had a high school education and some community college education. He had no formal legal training and is not licensed to practice law in any state. Appellant acknowledged that he had helped Jarratt prepare pleadings. Appellant was familiar with the pleadings purportedly prepared by Jarratt. Appellant acknowledged that Jarratt had referred to him as his counsel of choice in pleadings.

At the close of the evidence, and after hearing closing arguments from both sides, the Court granted the writ. Appellant made no motions to strike or to set aside the verdict at any time. After the Court rendered its verdict,

appellant merely stated his objection to the verdict and gave oral notice of appeal.

Appellant filed a timely notice of appeal to the Virginia Supreme Court. He assigned six points as error.[2] With the exception of point 4, the assignments were never raised in the trial court. On September 11, 1985, the Virginia Supreme Court refused to grant the petition for appeal finding no reversible error. This appeal followed.

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2 1. Can Quo Warranto lie against a sovereign free man?
2. Can a free sovereign man's First Amendment rights of the United States Constitution be denied by Quo Warranto proceedings?
3. Can a free sovereign man's rights guaranteed by Virginia's Constitution, Article 1, Section 12 and Section 16 be denied by Quo Warranto Proceedings?
4. Can the Petitioner be forced by the court to move forward without the assistance of Counsel of Choice?
5. Do the rules of the Supreme Court of Virginia apply to Quo Warranto Proceedings in like manner as any other proceeding before a Circuit Court?
6. Can the Virginia Bar Association in conjunction wit the State of Virginia deny a sovereign free man's Sixth Amendment rights of the United States Constitution?

ARGUMENT

1. The Judgment Below Rests On An Adequate Non-Federal Basis.

It is beyond dispute that appellant has no constitutional right to practice law without a license. Indeed, this Court has long recognized that a state has the inherent and exclusive interest in the licensing of attorneys. See., e.g., Schware v. Board of Bar Examiners, 353 U.S. 232 (1957). Thus, "the determination of which individuals have the requisite knowledge and skill to practice may properly be committed to a body such as [a state board of bar examiners]. Whitfield v. Illinois Board of Law Examiners, 504 F.2d 474 (7th Cir. 1974). While a federal court has a legitimate interest in ensuring that the right to practice law is not impermissibly withheld, it is clear that "[a] federal court is not justified in interfering with the determination unless there is proof that it is predicated upon a constitutionally impermissible reason." Id. No such proof exists in this case. Appellant has no legal training and is not admitted to the Bar of any jurisdiction.

In order to practice law in Virginia an individual must have satisfied certain educational requirements, Va. Code

§ 54-62, passed a bar examination, Va. Code § 54-64, or waived in from a qualifying jurisdiction, Va. Code § 54-67. That individual must be a member of the Virginia State Bar. Rules of the Supreme Court, Part Six, Section IV, ¶ ¶ 2 and 3, Code of Virginia. These requirements do not deprive lay persons of any constitutional rights. Rather, as stated in the Introduction to Virginia Supreme the Court Rules "[t]he right of individuals to represent themselves is an inalienable right common to all natural persons. But no one has the right to represent another; it is a privilege to be granted and regulated by law for the protection of the public."

2. The Appeal Does Not Present A Substantial Federal Question.

appellant was not deprived of any constitutional right in the courts below. The quo warranto proceeding properly gave the trial count the jurisdiction to consider the Commonwealth's allegations. He had an opportunity to present his case, and to cross-examine witnesses which he

did. Va. Code § 8.01-843 gave appellant the right to a jury trial upon his request.[3] Appellant never requested a jury trial.

Appellant objected to proceeding before the trial court to retain assistance of counsel "who may or may not be a member of the bar ...." The trial court properly denied the motion for a continuance. Appellant had ample time to retain counsel, yet made no effort to do so. Moreover, appellant's statement that he would retain counsel "who may or may not be a member of the bar" was frivolous on its face, and demonstrated that the real purpose for seeking the continuance was to delay or evade and not to prepare for trial. The trial court's dismissal was based on abundant precedent. See, Von Sant v. Commonwealth, 224 Va. 269, 295 S.E.2d 883 (1982); Mullinax v. Waybright, 33 W. Va. 84, 10 S.E. 25 (1889). Furthermore, since the record indicated no

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[3]Va. Code § 8.01-843 provides:

> Unless the defendant shall ask for a trial by jury, the court shall hear the same. ... If the defendant appears and is found guilty the court shall give such judgment as is appropriate and authorized by law and for costs incurred in the prosecution of the information, including a reasonable attorney's fee to be prescribed by the court.

abuse of discretion, the Virginia Supreme Court properly denied the appeal. In any event, even if the lower courts were incorrect, the matter would not rise to the level of a federal question as appellant has asserted.

3. Appellant's Representation of Mr. Jarratt Amounted To the Unlawful Practice of Law.

A non-lawyer, i.e., a person not duly licensed to practice law in the Commonwealth of Virginia, may not represent the interest of another before any tribunal, regardless of whether the representation is with or without compensation. See, Rules of the Supreme Court, Part Six, §§ 1(a)(3), 1(B); UPR 1-101 and UPC 1-2.

Appellant has no legal training and is not admitted to the Bar of any state. Mr. Jarratt demonstrated absolutely no understanding of the legal pleadings he purportedly filed. The evidence was overwhelming that appellant was the "counsel of choice" of Jarratt, and prepared and filed pleadings in Mr. Jarratt's behalf. Accordingly, the injunction was properly granted by the lower court and the appeal must be denied.

CONCLUSION

Appellee respectfully urges the Court to deny the appeal expeditiously to protect the public from further abuse of the attorney-client relationship by appellant L. Chester Carter, and to grant it attorney's fees and costs expended in the defense of this appeal

RESPECTFULLY SUBMITTED,

COMMONWEALTH OF VIRGINIA

By: _____
Counsel

CERTIFICATE

In accordance with Rule 28 of the Rules of the United States Supreme Court, I hereby certify that three copies of the foregoing Motion To Dismiss were mailed, postage prepaid, this 20th day of December, 1985, to L. Chester Carter, Post Office Box 84, Stony Point, Virginia 23882.

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A227-P516